CURRENT DECISIONS

ATTORNEY AND CLIENT—FEES—STATUTORY REGULATION.—The Workmen's Compensation Act provided that claims for legal services arising under that statute were enforcible only if approved by the Commision. The respondent, an attorney, entered into a contract with his client's brother whereby the latter was to pay him fifty *per cent.* of the amount awarded the client by the Workmen's Compensation Commission. Disciplinary proceedings were instituted by the bar association against the respondent. *Held,* that it is contrary to legal ethics for attorneys to charge fees of greater amount than that fixed by the Compensation Commissioner. *Matter of Fisch* (1919, N. Y.) 61 N. Y. L. J. 1234.

Generally it is not illegal or against public policy for a lawyer to prosecute an action on a contingent fee basis. See *Stevens v. Sheriff* (1907) 76 Kan. 124, 127, 90 Pac. 799, 800. However, it was the purpose and intent of the Compensation Act to prevent this in order to insure the injured workman as large a return as possible. It is therefore submitted that the court properly squelched this attempt to indirectly evade the beneficent objects contemplated by this legislation. For a discussion of the duties of attorneys, see (1911) 21 YALE LAW JOURNAL, 72.

CARRIERS—CARMACK AMENDMENT—PRESUMPTION AGAINST TERMINAL CARRIER.—In an action against the terminal carrier to recover damages for injury to goods, the plaintiff introduced evidence to show that the goods were delivered in good condition to the initial carrier and were received from the defendant in a damaged condition. The defendant contended that since the passage of the Carmack Amendment this did not make a *prima facie* case. *Held,* that the plaintiff had made a *prima facie* case, as the common-law presumption against the terminal carrier was not superseded by the Carmack Amendment. *Central of Georgia Ry. v. Scrivens* (1919, Ga. Ct. App.) 100 S. E. 233.

It is settled law that the Carmack Amendment did not deprive the shipper of his right of action against the connecting carrier, but merely gave an additional remedy against the initial carrier when the goods were taken on a "through" bill of lading. *Georgia, Fla. & Ala. Ry. v. Blish Co.* (1915) 241 U. S. 190, 36 Sup. Ct. 541. And so it did not affect the common-law presumption involved in the principal case, against the terminal carrier. *Erisman v. Chicago B. & Q. R. R.* (1917) 180 Iowa, 759, 163 N. W. 627. For a discussion of the liability of carriers under the Carmack Amendment, see Daish, *Liability of Common Carriers under the Act to Regulate Commerce* (1916) 25 YALE LAW JOURNAL, 341.

CONFLICT OF LAWS—LAPSING OF LEGACIES—"RENVOI."—One T, a citizen of the United States, whose domicile of origin was in New York, died in France, where he had acquired a domicile. He left a will in which he bequeathed his residuary estate in equal parts to an aunt and a cousin. The cousin having died before T, her share would accrue to the aunt under French law, while it would lapse under the law of New York and go to the testator's brother. The latter opposed the proposed distribution, contending that the law of the domicile (sec. 47, Decedent Estate Law) in accordance with which the New York courts would determine the

question, referred to the French law in its totality, including its rules of the conflict of laws, and as the French law would decide the case according to the law of the country to which the testator belonged (*lex patriae*) the New York court should apply New York law. *Held,* that sec. 47 of the Decedent Estate law referred to the French law relating to the lapsing of legacies, and not to the French law in its totality, including the conflict of laws. Referee's report, approved by the Surrogate of New York County. *In the Matter of the Judicial Settlement of the Accounts of Henry Overing Tallmadge, Executor of Coster Chadwick, Deceased* (1919) 62 N. Y. L. J. 215.

See COMMENTS, *supra,* p. 214.

CONTRACTS—BREACH—WAIVER—DAMAGES.—By a contract with the defendant the plaintiff obtained the exclusive selling agency, within a certain territory, of machines which the defendant manufactured. After the plaintiff entered into this business, the defendant forbade his taking orders for machines to be used in "public service," on the ground that another party had the exclusive privilege of such sales. The plaintiff continued the business for a while and then terminated the agency. He sued for the damages which resulted from this limitation of his agency. The defendant contended that the plaintiff had waived this breach of contract and therefore could not recover damages. *Held,* that he could recover, since waiver of a breach does not forfeit a right of action for the resulting damages. *Hoffer v. Hooven-Owens-Rentschiler Co.* (1919, Sup. Ct.) 177 N. Y. Supp. 720.

The distinction between a waiver of excuse for future nonperformance and a forfeiture of a right to damages, both arising from a breach of contract by the other party thereto, is undoubtedly sound. In support of this, see (1918) 28 YALE LAW JOURNAL, 86.

MINES AND MINERALS—INTERFERENCE BY ABANDONED OIL WELL WITH LIVE WELL.—After the plaintiff had sunk a well on his premises which produced oil, the defendant sunk a well on his premises near the plaintiff's well, which proved a non-producer and was abandoned. It caused air to leak into the plaintiff's pump, resulting in loss of suction and a material reduction in the production of oil from the plaintiff's well. The defendant refused to close his well, though he could have done so without trouble or expense by putting back the plug which had been taken out. The plaintiff sued for an injunction and damages. *Held,* that the plaintiff was entitled to relief. *Higgins Oil & Fuel Co. v. Guaranty Oil Co., Ltd.* (1919, La.) 82 So. 206.

See COMMENTS, *supra,* p. 213.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—LAST CLEAR CHANCE.—The plaintiff's intestate negligently started across the defendant's track and was killed by an engine operated by employees of the defendant. The employees exercised due care and did all they could to avert the accident. The plaintiff sued for damages. *Held,* that she could not recover, with a dictum that where "negligence of the railroad and of the person injured are concurrent and continue up to the moment of the accident," a railroad cannot be held liable under the doctrine of "last clear chance." *Nolan v. Illinois Central R. R.* (1919, La.) 82 So. 590.

The court seems to apply the concept that "last clear chance" means sole physical power in the defendant, after he has actually obtained knowledge of the plaintiff's danger, to avoid the injury. Other authority finds the require-